



30 JUL 2003

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In re Application of ROTHBARTH et al  
U.S. Application No.: 09/701,618  
PCT Application No.: PCT/DE99/01684  
Int. Filing Date: 09 December 1999  
Priority Date Claimed: 03 June 1998  
Attorney Docket No.: 2502498-991100  
For:

DECISION

This is in response to applicant's "Reply to Notification of Defective Response" filed 30 June 2003, which is being treated as a petition under 37 CFR 1.181. No petition fee is due.

**BACKGROUND**

On 09 December 1999, applicant filed international application PCT/DE99/01684, which claimed priority of an earlier Germany application filed 03 June 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 09 December 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 December 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired on 03 December 2000.

On 01 December 2000, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 13 April 2001, applicant purportedly filed an executed declaration.

On 30 April 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 14 March 2003, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 30 June 2003, applicant filed the present petition under 37 CFR 1.181 along with a copy of the declaration purportedly filed on 13 April 2001 and a copy of a postcard receipt.

### DISCUSSION

A review of the application file reveals that the declaration purportedly filed on 13 April 2001 is not present.

MPEP 503 states,

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In the present case, the postcard receipt offered by applicant does not bear a USPTO date stamp. Therefore, the declaration is not entitled to the filing date requested. It is noted that the postcard receipt lists an assignment and checks in the amount of \$65.00 and \$40.00 in addition to a declaration. USPTO records reveal that the assignment and check for \$40.00 were received. However, the fee records for the present application do not indicate that a check for \$65.00 was ever submitted.

Because the time period for response to the 14 March 2003 Notification of Defective Response was not extendable and because the time period for response to the Notification of Missing Requirements has elapsed, the present application is abandoned.

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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